



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/368,433	08/05/1999	ROBERT ALAN FLAVIN	YO998-205	5521

21254 7590 06/19/2002

MCGINN & GIBB, PLLC
8321 OLD COURTHOUSE ROAD
SUITE 200
VIENNA, VA 22182-3817

EXAMINER

HUYNH, SON P

ART UNIT	PAPER NUMBER
----------	--------------

2611

DATE MAILED: 06/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/368,433

Applicant(s)

FLAVIN, ROBERT ALAN

Examiner

Son P Huynh

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "receiver 150" on lines 7, 31,35 page 3; lines 7, 12, 13, 16, 17, 22, 24 page 4; "tap delay 165 or video recorder 160) on lines 17-18, page 4. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Double Patenting

2. Claims 1,5-6, 11-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,005,603. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Regarding claim 1, the elements being claimed are recited patent claim 1.

Regarding claim 5, the claim limitation is broader in scope than patent claim 3.

Art Unit: 2611

Regarding claim 6, the claim limitation is broader in scope than patent claim 4.

Regarding claim 11, the claim limitation is broader in scope than patent claim 5.

Regarding claim 12, the claim limitation is broader in scope than patent claim 6.

Regarding claim 13, the claim limitation is broader in scope than patent claim 7.

3. Allowance of claims 1, 5-6, 11-13 would result in an un-warranted time wise extension of the monopoly granted for the invention as defined in claims 1, 3-7 of patent number 6,005,603.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 2611

5. Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Throckmorton (US 5,818,441).

Regarding claim 1, Throckmorton et al. discloses a system for supplying information associated with a broadcast television program (primary data) to a consumer, wherein the associated data has content that is relevant to the primary data (see col. 3, lines 55-60) and the associated data is inserted into the vertical blanking interval of the television signal on the supplier side of the system and transmitted by transmitter 30. The television program and associated are received by receiver 36 at the receiving site 34, accessed by human interface 42 and stored in memory 40 (see figure 2). The processor 38 is executed based on the associated data sent from the supplier site (see col. 6, lines 60-63). Throckmorton et al. further discloses sending a comprehensive program listing (EPG) and other additional information such as the date, time, name of a schedule program, type of program and how much of the program remains over unused section of the NTSC bandwidth to receiving site (see col. 2, lines 22-39). In addition, Throckmorton et al. discloses Therefore, the receiver 36 reads on the receiver section being claimed; the primary data reads on the content stream being claimed; the associated data, EPG, and other additional information read on the announcement being claimed; processor 38 reads on the controller being claimed. Inherently, the announcements being selective added to the signal by a broadcaster of the signal and selectively by human interface 42.

Art Unit: 2611

Regarding claim 2, Throckmorton et al. discloses the description includes date, time, name of a scheduled program, type of program and how much of the program remains (see col. 2, lines 30-32).

Regarding claim 3, Throckmorton et al. discloses a source of the signal comprises a television (see col. 3, lines 36-45).

Regarding claim 4, Throckmorton et al. discloses the function is a play (see col. 7, lines 21-30).

Regarding claim 5, Throckmorton et al. discloses a system as system as discussed in the rejection of claim 1. Throckmorton further discloses the primary data stream could be delivered by broadcasting television and the associated data could be delivered over high speed digital network, a FM sideband, a direct satellite broadcast, a cable network, a telephone, etc.(see col. 4, lines 15-20). Inherently, the receiver comprising a first receiver section for receiving content stream on a content carrier signal; and a second receiver section for receiving announcement.

6. Claims 6-7, 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Hendricks et al. (US 5,559,549).

Regarding claim 6, Hendricks et al. discloses a system an operation center 202 performed two primary services, packaging television programs and generating the program control information signal. At the operation center 202, television program are received from external program sources, a programmer packages the signals by entering certain information into the CAP. This information includes date, time slot, program category of the various programs. The programmer and the CAP utilize demographic data and ratings in performing the packaging tasks. After the process is complete, the CAP display program schedule that correspond to the entries of the programmer. The programmer may edit the programs schedules until satisfied with the program schedule. The operations center 202 transmits different groups of programs to different cable headends 208 and/or set top terminals 220 via uplink 204 (see col. 6, line 61- col. 7, line 50 and figure 1). The program control information signal contains a description of the contents of the program package, commands to be sent to the cable headend 208 and/or set top terminal 220, and other information relevant to the signal transmission (see col. 8, lines 1-5). Therefore, the programmer reads on the analyzer being claimed; CAP reads on the announcement generator being claimed; uplink 204 reads on the transmitter section.

Regarding claim 7, Hendricks et al. discloses the analyzer is a programmer (see col. 7, lines 26-29).

Regarding claim 9, Hendricks et al. discloses the announcement comprises a time associated with the content stream (see col. 7, lines 27-29 and col. 13, lines 41-50).

Regarding claim 10, Hendricks et al. discloses the announcement further comprises a content stream identifier (see figure 7B).

Regarding claim 11, Hendricks et al. discloses a system as discussed in the rejection of claim 6. Hendricks further discloses set top terminal 220 comprising:
a receiver section for receiving a signal;
content stream on the carrier signal;
a controller (microprocessor) that performs a function determined by the description and the time (see col. 10, line 9- col. 11, line 50), wherein the announcement carried on the signal, wherein the announcement containing a description about the content stream, a time at which the content stream is received on the carried signal, and a content identifier, the announcement being selectively added to the signal by programmer at the operation center 202 and selectively by set top terminal 220 as discussed in the rejection of claims 6-10.

Claim Rejections - 35 USC § 103

Art Unit: 2611

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (US 5,559,549) as applied to claim 7 above, and in view of Yoon et al. (US 5,642,172).

Regarding claim 8, Hendricks et al. discloses a system as discussed in the rejection of claim 7. However, Hendricks et al. fails to disclose the electronic signal processor includes brightness detection device.

Yoon et al. discloses brightness detector 10 for detecting exterior brightness. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hendricks et al. to provide a brightness detector as taught by Yoon et al. in order to detect the brightness of the image to expand capabilities of the system.

9. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (5,559,549) and in view of Diehl et al. (US 5,659,653).

Art Unit: 2611

Regarding claim 12, Hendricks et al. discloses receiving one or more content streams, each of the content streams having a content; receiving one or more announcements having one or more descriptions about the content of one or more of the content streams, the announcements being selectively added to a content stream by a broadcaster of the content stream and selectively by receiver 220 and a controller that performs a function determined by the description and the time as discussed in the rejection of claims 6 and 11. However, Hendricks et al. fails to discloses matching one or more descriptions to one or more of the content streams; performing a function during the processing of one of the content streams if the content stream being processed matches one or more of the descriptions.

Diehl et al. discloses automatically recording the pre-selected program if the identity data of the coming program matches with the stored identity data (see col. 1, lines 40-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hendricks et al. with a process of recording program only if the identity data of the incoming program matches with the stored identity data as taught by Diehl et al. in order to increase accuracy for the system.

Regarding claim 13, the elements being claimed correspond to the elements of the process being claimed in claim 12 and are analyzed as discussed with respect to the rejection of claim 12.

Art Unit: 2611

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son P Huynh whose telephone number is 703-305-1889. The examiner can normally be reached on 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on 703-305-4380. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the customer service office whose telephone number is 703-306-0377.

Son P. Huynh
June 10, 2002


ANDREW FAILE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600